JD(SF)–50-04
Bothell, WA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

EDISON ELECTRIC and/or
EDISON ELECTRIC GROUP, INC.

and Case 19-CA-29005

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION NO. 46,
AFL-CIO, CLC

On Behalf of the General Counsel
John Fawley, Esq.
Seattle, Washington

On Behalf of the Charging Party
Greg Galusha, Organizer
Seattle, Washington

On Behalf of Respondent
Timothy J. Pauley, Esq.
Seattle, Washington

DECISION

Statement of the Case

John J. McCarrick, Administrative Law Judge. This case was tried in Seattle, Washington, on April 20, 2004, upon General Counsel's Complaint that alleged Edison Electric and/or Edison Electric Group, Inc.(Respondents) violated Section 8(a)(1) and (5) of the Act by: refusing to recognize and bargain with the International Brotherhood of Electrical Workers, Local Union No. 46, AFL-CIO, CLC (Union), by refusing to maintain the wages, hours and other working terms and conditions of the NECA agreement, by refusing to apply the agreement to unit employees and by refusing to furnish the Union with information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees. Respondent timely denied any wrongdoing. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

Findings of Fact

I. Jurisdiction

Respondent Edison Electric, a sole proprietorship owned by Steve Begley with an office and place of business in Bothell, Washington, has been engaged in business as a commercial electrical contractor in the construction industry. Respondent Edison Electric Group, Inc. is a

Washington corporation with an office and place of business in Bothell, Washington, where it is engaged in business as a commercial electrical contractor in the construction industry. During the past twelve months, Respondents in conducting their business operations provided services from their facilities within the State of Washington, to customers within said State, or sold and shipped goods or services to customers within the State of Washington, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of $50,000. Respondents admits and I find that they are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Facts

The facts of this case are essentially not in dispute. Respondent Edison Electric was created in early 2002 by Steve Begley, as sole proprietor[1], at the request of SEACON Construction to complete the electrical work at the Plexus project for a defunct electrical subcontractor, Arizona Electric. In July 2002, the Union organized Respondent Edison Electric's electrician employees, who were all members of the Union and presented Steve Begley with signed authorization cards.[2] On August 6 and 7, 2002 Begley executed the Letter of Understanding[3] and Letter of Assent[4] binding him to the NECA Inside Construction Agreement[5] covering all employees engaged in the following work:

> General foremen, foremen, cable splicers, certified welders, journeymen, wiremen, journeymen technicians and apprentices.

Respondent Edison Electric Group, Inc. began operation in January 2003. Steve Begley's wife, Evelyn Begley is the president of Edison Electric Group and Steve Begley is Respondent Edison Electric Group's general foreman. The parties stipulated that since July 21, 2003 Respondent Edison Electric Group, Inc. has operated as the alter ego of Respondent Edison Electric and has failed to maintain the wages, hours and other terms and conditions of the NECA agreement and has failed to apply that collective-bargaining agreement to employees performing unit work. This stipulation is supported by the testimony of Evelyn Begley. Evelyn Begley admitted that Respondent Edison Electric Group, Inc. performed electrical work with Union represented employees in the same geographic area and applied the terms of the NECA Inside Construction Agreement to its employees until July 21, 2003. After that time Evelyn Begley no longer considered Edison Electric Group a Union contractor bound by the NECA Agreement and stopped paying wages and other benefits under the NECA agreement. In this regard Evelyn Begley sent a letter to the Union dated October 14, 2003 in which she stated that Edison Electric Group, Inc. was not a "signature shop" and for that reason had ceased making payments to the trust funds.[6] Evelyn Begley further admitted that Respondent Edison Electric

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[1] Steve Begley's wife, Evelyn was the office manager for Respondent Edison Electric.

[2] While Steve Begley denied that the Union presented him with evidence of signed authorization cards, Begley acknowledged he had been presented with authorization cards. See GC Exh. 4. I credit the testimony of Union organizer Gregory Boyd that he presented Begley with evidence of signed union authorization cards.

[3] GC Exh. 2.

[4] GC Exh. 3.

[5] GC Exh. 5.

[6] GC Exh. 7.

Group, Inc. hired employees without first utilizing the hiring hall as required under the NECA agreement.

On November 4, 2003, in a letter[7] to Evelyn Begley the Union requested information including all information regarding the change in ownership from Edison Electric to Edison Electric Group, Inc., a current list of bargaining unit employees with the dates of hire and wage rates, a list of all bargaining unit employees who were employed by Edison Electric Group since January 2003 and their wage rates and any material regarding employee benefit programs including, retirement plans, health coverage, vacation pay, sick leave, bonus plans, profit sharing or any other material benefit provided by Edison Electric Group to its employees. This information request was generated as a result of information the Union had obtained that Edison Electric Group was hiring Union salts from newspaper ads and Respondent's October 14, 2003 letter noted above. Respondent Edison Electric Group, Inc., acknowledged receipt of the Union's request for information by letter dated November 6, 2003 and sent a copy of its certificate of incorporation and advised that it had two employees, David Larimer and Jon Hoene, who were Union members, and that it had no contract with the Union.

In January 2004, Evelyn Begley met with Union representatives Gregory Boyd and Greg Galusha at Respondent Edison Electric Group, Inc.'s office. The purpose of the meeting was to try to settle the underlying unfair labor practice charge that the Union had filed in this case. During this meeting Evelyn Begley showed the two Union representatives some computer screens that had the names of employees and their wage rates. The information was not complete. No other information requested in the Union's November 4, 2003 letter has been furnished to the Union.

B. The Analysis

1. The Refusal to Recognize and Bargain with the Union and the Failure to Maintain the Wages, Hours and Other Terms and Conditions of the NECA Agreement.

In the Complaint Counsel for the General Counsel alleges that Respondents Edison Electric and Edison Electric Group, Inc. constitute alter egos and a single employer and in the alternative Respondent Edison Electric Group Inc. is the successor to Respondent Edison Electric.

There is a clear distinction between the alter ego and single employer doctrines. The Board has held the single employer analysis applies only to two distinct ongoing enterprises. A single employer analysis begins with the question of whether two allegedly separate business entities are in fact one while a joint employer analysis presupposes two separate legally distinct businesses where there is no common ownership. *NLRB v. Browning-Ferris Industries of Pennsylvania*, 691 F.2d 1117 (3d Cir. (1982); *Continental Radiator Corp*., 283 NLRB 234 (1987). The alter ego analysis applies where one employer has ceased to exist and second employer begins to perform the same operation. *NLRB v. Hospital San Rafael*, 42 F.3d 45 (1st Cir. 1994); *NYP Acquisition Corp*., 332 NLRB No. 97 (2000).

Alter ego status may be found where the two enterprises have substantially identical management, business purpose, operation, equipment, customers, supervision, ownership and where there exists a motive by one entity to avoid its labor obligations. *Crawford Door Sales Co*., 226 NLRB 1144 (1976); *Fire Tech Systems & Fire Shield Sprinkler Systems*,

[7] GC Exh. 6.

319 NLRB 302 (1995); *Perma Coatings*, 293 NLRB 803 (1989); *NYP Acquisition Corp., supra.* Single employer status is established where there is an interrelation of operations, common management, centralized control of labor relations and common ownership or financial control. *Radio & Television Broadcast Technicians Local 1264 v. Broadcast Services of Mobile,* 380 U.S. 255 (1965); *Techno Contracting Corp.,* 333 NLRB No. 5 (2001); *Bultman Enterprises* 332 NLRB No. 31 (2000); *Francis Building Corp.,* 327 NLRB 485 (1999). Joint control of labor relations is a critical factor in establishing single employer status. *Soule Glass & Glazing Co*., 264 NLRB 792 (1979); *Alabama Metal Products*, 280 NLRB 1090 (1986).

Here, the record reflects that Respondents Edison Electric and Edison Electric Group, Inc. stipulated that Edison Electric Group, Inc. is the alter Ego of Edison Electric. This stipulation is supported by the record. When Edison Electric went out of business, Edison Electric Group, Inc. took over with the same husband and wife owners, the same husband and wife supervision, the same business purpose of performing electrical subcontracting in the same geographic area of Washington State, and with the same Union employees. Moreover, it is apparent that Respondent Edison Electric Group, Inc. was formed to avoid Edison Electric's obligations under the NECA Inside Construction Agreement. Six months after its formation, Respondent Edison Electric Group, Inc. repudiated its agreements with the Union and no longer considered itself a Union signatory. The timing of this repudiation, a mere six months after its formation, suggests Edison Electric Group, Inc. was created to avoid Respondent Edison Electric's labor obligations. Based upon the parties' stipulation and the supporting facts discussed above, I conclude that Respondents Edison Electric and Edison Electric Group, Inc. are alter egos.

Having found Respondents are alter egos, it follows that Respondent Edison Electric Group, Inc. has an obligation to bargain with the Union and is bound by the NECA collective-bargaining agreement Edison Electric signed. *Concourse Nursing Home,* 328 NLRB 692 (1999); *Crawford Door Sales Co., supra*. Respondents' admitted failure to recognize and bargain with the Union, their failure to maintain the wages, hours and other working terms and conditions of the NECA agreement, and their failure to apply the NECA agreement to unit employees Violated sections 8(a)(1) and (5) of the Act.

2. The Failure to Furnish the Union with Information.

The Complaint alleges that Respondents violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the Union with information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees.

An employer has the duty to furnish the union with requested information that is necessary for the union to perform its statutory bargaining obligation. This obligation extends to policing the administration of a collective-bargaining agreement. *Kroger Co*., 226 NLRB 512 (1976).

In this case on November 4, 2003, the Union requested information from Respondent Edison Electric Group, Inc to determine if Respondents Edison Electric Group, Inc. and Edison Electric were alter egos and not complying with their obligations under the NECA Agreement. Respondents did not substantially comply with that request in Edison Electric Group's November 6, 2003 letter or in the January 2004 meeting in which Union representatives were shown incomplete records. By failing to provide the Union with the requested information, Respondents violated section 8(a)(1) and (5) of the Act.

3. Deferral to Arbitration

Respondents contend that the Union's charge should be deferred to the parties' grievance-arbitration provisions. Counsel for the General Counsel objects to deferral of the charges because Respondents repudiated the collective-bargaining agreement.

Under *Collyer Insulated Wire*, 192 NLRB 837 (1971), the Board will defer to arbitration charges involving violations of section 8(a)(5) of the Act. However, there will be no deferral where respondent's conduct constitutes a repudiation of collective bargaining principles. *Budrovich Construction Co*., 331 NLRB 223 (2000); *Los Angeles Marine Hardware*, 235 NLRB 720 (1978). Moreover, deferral is not appropriate where a respondent refuses to furnish information. *Shaw Supermarkets*, 339 NLRB No. 108 (2003)

In this case Respondents repudiated the NECA Inside Agreement signed by Respondent Edison Electric in August 2002 by failing to apply its terms and conditions to Edison Electric Group, Inc. bargaining unit employees. Respondents have failed to pay wages, benefits or other terms and conditions of employment under the agreement after July 21, 2003. In addition Respondents have refused to furnish information necessary to the Union's responsibilities as collective-bargaining representative. Respondents on the one hand cannot avoid their obligations under the NECA agreement regarding wages, benefits and other terms and conditions of employment while on the other hand contending that its grievance-arbitrations provisions should be applied. In view of Respondents' repudiation of the NECA collective-bargaining agreement and its failure to provide information, I find deferral is not appropriate.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Edison Electric Group, Inc., is the alter ego of Respondent Edison Electric.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. By refusing to recognize and bargain with the International Brotherhood of Electrical Workers, Local Union No. 46, AFL-CIO, CLC (Union), by refusing to maintain the wages, hours and other working terms and conditions of the NECA agreement, by refusing to apply the agreement to unit employees and by refusing to furnish the Union with information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees, Respondents violated Section 8(a)(1) and (5) of the Act.

Remedy

Having concluded that the Respondent, Edison Electric Group, Inc. is the alter ego of Respondent Edison Electric and they committed certain violations of the Act, I shall recommend that they cease and desist there from and take appropriate remedial action, including transmitting the contributions owed to the Union's health and welfare, pension and other funds pursuant to the terms of the collective-bargaining agreement and making whole unit employees not dispatched because of Respondents' failure to utilize the hiring hall provisions of the collective-bargaining agreement for any wages, medical, dental, or any other expenses ensuing from the Respondent's unlawful failure to make such required payments and contributions in accordance with the provisions of *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), with interest

as provided by *New Horizons for the Retarded*, 283 NLRB 1173 (1987) and to provide the Union with all the information requested in the Union's letter of November 4, 2003.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

Edison Electric and Edison Electric Group, Inc., alter egos, their officers, agents, successors, and assigns, shall:

1. Cease and desist from

a. Repudiating the collective-bargaining agreement covering the wages, hours, and working conditions of the employees in the bargaining unit described above.

b. Refusing to bargain with the Union as the exclusive representative of employees in the bargaining unit described above within the meaning of Section 9(a) of the Act by refusing to furnish the Union with information that is necessary to the performance of its duties as exclusive bargaining representative.

c. Repudiating our collective-bargaining agreement with the Union by, failing to pay, inter alia, the wage rates, health and welfare payments, pension payments, annuity apprenticeship payments, vacation payments, and by failing to use the contractual hiring hall provisions.

d. In any other manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

a. Recognize and bargain with the Union as the exclusive representative of its employees in the bargaining unit described above and continue in force and effect the collective-bargaining agreement between it and the Union.

b. Provide the Union with the information requested on November 4, 2003

c. Pay into the appropriate funds and accounts all trust fund payments owed to the Union's health and welfare, pension and other funds pursuant to the terms of the collective-bargaining agreement with the Union.

d. Make whole unit employees, including those not dispatched because of Respondents' failure to use the hiring hall provisions of the collective-bargaining agreement and those employees affected by Respondents' repudiation of the collective-bargaining agreement, by reimbursing unit employees for wages,

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes

medical, dental, or any other expenses ensuing from its unlawful failure to make such required contributions.

e. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

f. Within 14 days after service by the Region, post at its facility and all of its jobsites copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2003.

g. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, San Francisco, California, June 21, 2004.

_____
John J. McCarrick
Administrative Law Judge

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union,
Choose representatives to bargain with us on your behalf,
Act together with other employees for your benefit and protection,
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with the International Brotherhood of Electrical Workers, Local 46, by refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the employees is the following bargaining unit:

General foremen, foremen, cable splicers, certified welders, journeymen wiremen, journeymen technicians and apprentices.

WE WILL NOT repudiate the collective-bargaining agreement by failing to pay wages, make trust fund payments and other contributions, and by failing to use the hiring hall provisions.

WE WILL NOT in any other manner, interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and bargain with the Union, as the exclusive representative of our employees in the above-described unit.

WE WILL continue in full force and effect the collective-bargaining agreement between Edison Electric and the Union effective from June 1, 2001 through May 31, 2004.

WE WILL furnish the Union with information requested on November 4, 2003.

WE WILL pay into the appropriate trust funds and other accounts all contributions that we failed to make since July 1, 2003 under the terms of our collective-bargaining agreement with interest.

WE WILL make whole the unit employees, including those not dispatched because of our failure to use the hiring hall provisions of the collective-bargaining agreement and those employees otherwise affected by Respondents' repudiation of the collective-bargaining agreement, by reimbursing unit employees for wages, medical, dental, or other expenses ensuing from our unlawful failure to make such required contributions.

EDISON ELECTRIC and/or
EDISON ELECTRIC GROUP, INC.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue-Room 2948 Seattle WA, 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.